IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.623 OF 1999.

Shri Vasant Moreshwar Choudhari : Appellant.

versus

Moreshwar Anant Choudhari
since deceased through his heirs
Smt.Nanibai Moreshwar Choudhari
& ors. : Respondents.

Mr.Rajesh Datar for the appellant.
Mr.P.N.Karlekar for Respondent Nos. 3, 4(1) to 4(3).

CORAM : D.G.DESHPANDE,J.

DATED : 9th February 2005.

ORAL ORDER

1. Heard the advocates for the appellant and Respondent Nos. 3 and 4. Appellant was the original defendant No.4. The suit came to be filed by one of his brother against the parents,

another brother and the appellant/Respondent No.4 for partition and separate possession of family property. This appellant resisted the claim. While the suit was pending, partition deed came to be executed, registered as between all the four persons who were the parties to the suit including the present appellant. Thereafter, the plaintiff moved the Court for a decree on admission under Order XII Rule 6 of the Civil Procedure Code giving all the details and particulars as to how and under what circumstances and to what effect the admission is given by the appellant/defendant No.4. The appellant opposed this application by filing reply in writing. Thereafter the Court framed the Issues, Whether the decree on admission can be passed ? The parties were permitted to adduce their evidence and, thereafter the Court passed the decree on admission which is challenged by the original defendant No.4 by this appeal.

2. Counsel for the appellant contended that the signature of the appellant was obtained by forge, coercion and under pressure. These facts have been deposed to by the appellant in his evidence on oath and, if these facts are taken

into consideration, then the appellant succeeds in making out a case of fraud and coercion. However, this argument was rightly rejected by the trial Court. Because this document i.e. the partition deed is dated 12.2.1988, the evidence of the appellant was recorded on 14.10.1992, after four years he has come before the Court with imaginary theory or story of putting him or exerting pressure upon him and getting signature on the document. When the original plaintiff filed application on 6.6.1990 for getting decree on admission and when the defendant/appellant filed reply to the same through his advocate, not a word is uttered or stated by him about the so called theory of pressure. No details are given, as they were given in the evidence. It is clear that the evidence given by the appellant was after thought and liable to be out right rejected

3. Apart from this, the Court in its well reasoned judgment has noted number of circumstances to come to the conclusion that signing of partition deed amounted to admission on the part of the defendant. It is not necessary to reproduce those circumstances. They are to be found in paragraphs 10 and 11. It is

clear from those facts that the appellant has reaped benefits of partition deed and then decided to disown it so as to deprive the others of the natural consequence of partition deed. Hence there is no merit in this appeal. It is dismissed with costs.

[D.G.DESHPANDE]

09/02/2005 JUDGE.